

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4034 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MADANKUMAR NAIDU

Versus

NARESHKUMAR SUDAMA BAGUL

Appearance:

MR PS CHAMPANERI for Petitioners

MR SD PATEL for Respondent No. 1

SERVED for Respondent No. 2

MR RAJENDRA CHAUHAN, APP for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/12/97

ORAL JUDGEMENT

The petitioners herein have moved this Court at a pre-cognizance stage.

2. The facts appearing in the petition, may be briefly noted :-

The complainant's father and respondent no.2

entered into partnership and started construction of shops on the land belonging to the complainant's father. The petitioners intending to purchase shops had booked one shop each as particularised in the petition. Upon the construction having been made, shops were to be allotted to the respective petitioners. It is the case of the petitioners that father of the complainant and respondent no.2 both had promised the petitioners to hand over possession of the shops as soon as the construction work would be completed. It is the case of the petitioners that the petitioner no.1 paid Rs. 50,000/ and the petitioner no.2 paid Rs. 15000/ each by way of booking charges towards cost of land and cost of construction of the shop as particularised in the petition. The petitioner no.1 was to pay a further sum of Rs. 50,000/ and the petitioner no.2 was to pay a further sum of Rs. 25,000/. In spite of such contract between the parties, the construction was not commenced. The petitioners made further payment in the sum of Rs. 10,000/ as was demanded. In spite of such fact, the complainant's father and the respondent no.2 were trying to sell off the said shops to third parties. The petitioners having come to know about the same, filed C.S.No. 5436/96 in the Ahmedabad City Civil Court for injunction against the complainant's father and partner of Datta Corporation viz. the respondent no.2. The application for interim injunction was also moved and the Court directed status quo to be maintained. Mr. Champaneri, ld. Advocate for the petitioners submits that the final order in the notice of motion proceedings has been passed to the effect that the Housing Board should be made a party to the suit and status quo with regard to the transfer of property in question as well as with regard to the construction to be made thereon should be maintained.

3. In the background of the aforesaid facts, it is the case of the petitioners that respondent no.1 has filed a complaint bearing Inquiry Case No. 24/97 before the ld. Chief Metropolitan Magistrate setting out the facts which are not correct according to the petitioners. They have, therefore, prayed for quashing of the said complaint. They have also prayed for setting aside the order of investigation passed by the ld. Chief Metropolitan Magistrate under sec.156(3) of the Code of Criminal Procedure, 1973.

4. Having heard the ld. Advocates appearing for the parties, I am of the opinion that the present proceeding is undertaken at the pre-cognizance stage and, therefore, only on that short ground, the same deserves not to be

entertained. At the same time, bearing in mind the peculiar facts of the case, the petitioners will have to be protected by issuing following limited directions. Following order is, therefore, passed :-

(i) The petitioners shall not be arrested and when such a need arises, they will be produced before the ld. Chief Metropolitan Magistrate and it would be open to the petitioner to move appropriate application for bail before such Magistrate. As and when such an application for bail is moved, the same shall be decided after hearing the petitioners as well as all concerned parties including the ld.PP-APP.

(ii) The petitioners will co-operate with the investigation as and when required.

5. Subject to the aforesaid directions, Rule is discharged. No order as to costs.

10.12.1997 [M.S.PARIKH, J]

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